

and 29 have been rejected. In this amendment, Claims 11-15, 24, 25, 27 and 29 have been amended and no new matter has been added.

The Examiner has removed the restriction between Groups I and IV in light of the amendment made to Claim 22 in the Response to the Restriction Requirement (dated May 13, 2002). It is noted, though, that the Office Action Summary indicated that Claim 22 was withdrawn from consideration. It is assumed that this was an oversight and it is requested that the next Office Action indicate that Claim 22 is being examined in the present application.

*clear
still
since GP II
was elected
in 5-13-02*

It is noted that the Examiner has maintained the Restriction Requirement as to the remaining groups. However, because the Examiner has not made the Restriction Requirement Final, Applicant takes this opportunity to continue to traverse the Requirement. Applicant submits that Claim 25 (which is presently recited as a member of Group V) should be examined with the elected Group II. It is submitted that Claim 25 is a coated food product which depends upon Claim 11 (which is part of Group II). Because Claim 25 would necessarily include all of the limitations of Claim 11, it is submitted that it would place no additional burden on the Examiner to examine Claim 25 with the already elected claims. Therefore, it is requested that Claim 25 be examined with Group II.

Claim 25 is a coated food product which depends upon Claim 11 (which is part of Group II).

Claims 11-15 and 24 have been rejected under 35 U.S.C. 112, second paragraph, as indefinite. The Examiner has taken the position that the claims are indefinite because they recite "and any similar food product" and "it" in the claim language. The claims have been amended to remove these phrases. It is submitted that the rejection is no longer

proper and it is requested that the rejection be withdrawn in light of the above amendments.

Claims 15, 24, 27, and 29 have been rejected as indefinite under 35 U.S.C. 112, second paragraph, because it is not know what the term "normal food additives" encompasses. The claims have been amended to remove the offending term and it is requested that the rejection be withdrawn.

Additionally, the Examiner has rejected Claim 15 (a product claim) as an improperly depending from Claim 1 (a process claim). Claim 15 has been amended to properly recite a product. Therefore, there is no need to remove Claim 15 from examination. It is requested that the indefiniteness rejection be withdrawn.

Claims 11, 15, 24, 27, and 29 have been rejected under 35 U.S.C. 102(b) as anticipated by the Duffy patent (U.S. Patent No. 5,202,137). It is submitted that this rejection is not well taken. As stated in the Response dated October 19, 2001, the Duffy reference is directed towards the inhibition of fat and oil migration in a product. That is, Duffy is directed towards the inhibition of 1) the migration from an oily substrate into a coating layer of the food product, and 2) the migration from an oily coating layer of food product into a substrate of the food product.

As stated in the October 19 Response, the problem addressed by Duffy is different from that addressed in the present invention. The problem addressed by Duffy is how to control the migration of fat and oil in food products between the substrate and the coating layer, which causes a foul taste in the food product. Duffy solves this problem by forming a

barrier film coating between the substrate and the coating layer of the food.

noted
The present invention applies a composition onto the coating layer of the food product or onto the substrate of the food product, if the food product does not have a coating layer. Duffy, however, requires the barrier film to be applied between the substrate

noted
and the coating layer of the food product. Additionally, Duffy does not suggest or disclose the application of a composition layer onto a layer coating a food product. This, therefore, results in a product which is different from that of the present invention. Therefore, it is submitted that the Duffy reference fails to disclose all the aspects of the present invention, and it is requested that the rejection be withdrawn.

Claim 12 has been rejected under 35 U.S.C. 103 as obvious in view of Duffy. The Examiner has taken the position that the optimization of the amounts would have been obvious to one of ordinary skill. It is submitted that the rejection is not proper given the irrelevance of the Duffy reference, as discussed above. Therefore, it is requested that the rejection be withdrawn.

Claims 13 and 14 have been rejected under 35 U.S.C. 103(a) as obvious in light of the Duffy reference and the Merory reference. It is submitted that this rejection is not well taken for a number of reasons. First, it is submitted that Claims 13 and 14 are allowable because Claim 11, the claim from which they depend is allowable for the reasons stated above.

noted
Additionally, it is submitted that neither Merory nor Duffy disclose a composition comprising a vegetable extract soluble in an alcohol. In fact, Merory only discloses the

origin and composition of Balsam of Peru and Benzoin, and their odors. Further, it is noted that Claim 1 of the Duffy reference requires that "the shellac solution [to be] in a range of 30% to 70% by weight of the barrier coating solution." As stated in the October 19 Response, it is observed that the proportions of Claim 13 results in a 25% shellac percentage by weight (350/1380). Finally, it is again noted that neither Duffy or Merory disclose or suggest the application of a composition layer onto a layer coating a food product. Hence, the combination of the references still fail to teach all of the aspects of Claims 13 and 14 and it is requested that the rejection be withdrawn.

In the event this paper is not timely filed, Applicant hereby petitions for an appropriate extension of time. The fee for this extension may be charged to our Deposit

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Account No. 01-2300, referring to client-matter number 024118-00030, along with any other additional fees which may be required with respect to this paper.

Respectfully submitted,

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Enclosure: Marked Up Copy of the Claims
Petition for Extension of Time (three months)

MARKED UP COPY OF THE CLAIMS

11. (Twice Amended) A composition for improving a coating for cookies, pastries, baked goods, cakes, waffles or other moist dough products[, and any similar food product,] wherein [it] the composition comprises a base of at least one neutral food-grade alcohol and at least one reactive vegetable extract soluble in said alcohol base.

12. (Twice Amended) The composition according to claim 11, wherein [it] the composition comprises:

750 g of 96°C alcohol

350 g of shellac,

resulting in a content on the refractometer (dry solution) of 40-45°C.

13. (Twice Amended) The composition according to claim 11, wherein [it] the composition comprises:

750 g of 96°C alcohol

350 g of shellac

30 g of Peru balsam

250 g of Benjamin gum.

14. (Twice Amended) The composition according to claim 11, wherein [it] the composition comprises:

1 l of 96°C alcohol

200 g of shellac

20 g of Benjamin gum.

15 (Thrice Amended) [The composition according to claim 1, wherein it] A composition comprising at least one food-grade vegetable additive in solution in at least one food-grade alcohol, and wherein the composition further

[also] comprises flavorings and [normal] food additives.

24 (Twice Amended) The composition of claim 11, where [it] the composition also comprises flavorings and [normal] food additives.

27. (Amended) The composition according to claim 15, wherein the flavorings and [normal] food additives are natural and soluble in the alcohol base.

29. (Amended) The composition of claim 24, wherein the flavorings and [normal] food additives are natural and soluble in the alcohol base.